IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 325 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

LAKHABHAI @ LAXMANBHAI MAGANBHAI PATEL

Appearance:

1. First Appeal No. 325 of 1999

MR J.C. SHETH FOR MR. UM SHASTRI for the appellant

MR DN PANDYA for Respondent No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 29/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

The present appeal has been filed by the Union of India challenging the award passed by the Railway Claims Tribunal, Ahmedabad Bench, Ahmedabad dated 6.1.1999 in claim No. 089800067 filed by respondent original applicant. Mr. J.C. Sheth, learned counsel appearing on behalf of the appellant has during hearing taken us through the judgement under challenge as well as record and proceedings which are available for our perusal.

2. While arguing the same, the learned counsel for the appellant has vehemently urged that the Railway Claims Tribunal has decided the claim application without giving an opportunity to the appellant to lead evidence and produce documents which resulted in miscarriage of justice. While taking us through the record, it is his contention that on behalf of the appellant, an application for adjournment was submitted before the Tribunal on 5.1.1999 requesting the Tribunal to grant long adjournment as the appellant opponents are required to produce necessary witnesses as well as certain documents in respect of the claim application filed. The said application is at Annexure-6A on the record of the case. The said application for adjournment dated 5.1.1999 was rejected by the Tribunal on the very day by passing order which reads as under:

> "Heard. Having regard to clear documentary evidence on the record, no purpose will be served in lengthening the matter. Hence rejected. Dated: 5.1.1999"

3. It is further found from the award of the Tribunal that the Tribunal has allowed the application of the respondents-applicants by awarding compensation of Rs. 4,00,000/- to be paid within 60 days from the date of the award failing which the appellant-opponent to pay interest at the rate of 12% per annum on the decretal amount from the date of the award. The Tribunal has also passed order in respect of granting cash amount to the applicants as well as some amounts were ordered to be kept in the Fixed Deposit. According to Mr. Sheth, the Tribunal ought to have given time to enable the appellant to examine the witnesses as well as to produce the documents. As application 6A was rejected, according to Mr. Sheth, the Tribunal has, without giving an opportunity, allowed the application of the claimants and accordingly contended that the said award of the Tribunal be set aside.

4. Mr. Pandya, learned counsel for the respondents, has vehemently opposed the above contention and it is his submission that the Tribunal has considered the evidence in the form of oral as well as documentary and decided the application. The Tribunal was, therefore, justified in rejecting the application for adjournment and the Tribunal has appreciated the evidence led on behalf of the claimants as well as appreciated the documentary evidence in respect of the claim application for compensation was filed. However, it is also his submission that the Tribunal ought to have while deciding the application, granted interest in favour of the applicants and it is his submission that the Tribunal has not awarded interest of the application filed by the claimants and this Court may, while dismissing the appeal, grant interest to the applicants.

5. In the light of the submissions by the learned counsel appearing in the matter and on perusal of the record, it transpires that the respondent applicants had submitted claim application before the Railway Claims Tribunal, Ahmedabad, in the year 1998. The said claim application was verified by applicant No. 1 Lakhabhai Laxmanbhai Maganbhai Patel and applicant No. 2 Dahiben Lakhabhai. The claim application was filed by the applicants for seeking compensation on account of death of their son Diptesh Lakhabhai Patel who was travelling on train on 29.9.1998 after purchasing railway ticket from Baroda Station to Ahmedabad by Inter City Express train. The deceased was travelling in general compartment of class II and he was standing near the entrance of the compartment due to heavy rush of the passengers in the compartment. Due to heavy rush of the passengers and due to heavy jerk he fell down from the compartment in between Vasad Railway Station and Adas Railway Station and he sustained serious injuries on his head and died after the accident. The applicant has accordingly prayed for compensation for the death of his son against the railway authority. After the service of the summons to the appellant, the railway authority filed written statement Exh. 6 denying the case of the applicant. It is the case of the appellant that the accident is not covered under Section 123 of the Railway Act, 1989 and the applicant has to put strict proof of the same. After considering the pleading, the Claims Tribunal has raised two issues. Whether the deceased was a bona fide passenger and whether the applicant is entitled to compensation, if any. On behalf of the applicant, Lakhabhai @ Laxmanbhai Maganbhai Patel appeared whose evidence is recorded at Exh. 8. He deposed before the Tribunal that Diptesh was his son aged

22 years. On 29.9.1998 his son was returning from college at Vadodara to Ahmedabad and he was travelling from Vadodara Station to Ahmedabad by train No. 9129 DN Inter City Express and his son fell down from the running train between Vasad Railway Station and Adas Railway Station. Rector of M.P. Hall of M.S. University has informed him about the incident where his son was used to reside. He along with his wife reached Anand Municipal Hospital where he was admitted for treatment after the accident. When they reached the hospital his son has already expired at about 12.00 O'clock midnight. Dead body of his son was handed over to him after post mortem was carried out. He has also produced and proved a copy of memorandum sent to the Railway police by Deputy Superintendent of Anand Railway as well as inquest panchnama, post mortem note and certificate with regard to the death of the deceased and identity card of his son issued by the M.S. University and the railway ticket and death certificate. It is further found from his deposition that his son Diptesh was unmarried. His three daughters are married. Application for compensation is filed claiming Rs. 4 lakhs as compensation by applicant No. 2, his wife. In cross examination he has admitted that he has no personal knowledge about the accident in question as he was not travelling with his son at the time when he fell down and further that he learnt about the accident at about 9.30 p.m. evening and he reached hospital at midnight.

6. Exh. 9 is the list producing railway ticket being ticket No. 70998076 from Vadodara to Ahmedabad dated 29.9.1998. Exh. 10 reported submitted by the Deputy Superintendent of Anand Railway to Railway Police at Anand informing that one person aged 22 years travelling in 9129 DN Inter City Express train has fallen down near Vasad-Adas railway line and he was shifted to Anand in the same train with request to take necessary steps for admitting the injured in the hospital. Exh. 11 is inquest panchnama drawn by the Railway Police, Anand, in presence of panchas on 29.9.1998 between 20.05 hours and 20.45 hours. Post mortem note of the deceased performed at Anand Nagarpalika Genearl Hospital is at Exh. 12 and the cause of death mentioned in the post mortem note shows that death was due to direct injury to the brain. In column No. 17 of the said post mortem note there are four injuries found. Exh. 13 is the death certificate issued by the Medical Officer of Anand Nagarpalika Hospital dated 12.10.1998. Exh. 14 is the xerox copy of the identity card and Exh. 15 is the death certificate of Dipteshkumar which shows that he died on 29.9.1998 and the same was registered on 1.10.1998.

7. As observed earlier, application Exh. 6A was submitted by the Presiding Officer before the Tribunal on 5.1.1999 and a request was made for long adjournment on the ground that the appellant was required to examine the witnesses in support of their case as well as to produce certain documents. The said application was rejected by the Tribunal on 5.1.1999 which we have already reproduced earlier. It is further found from the record that after rejecting application the Tribunal has heard the arguments and in the light of the evidence led by the applicants, the finding was recorded that the deceased was a bona fide passenger travelling in the train. The railway ticket is also found on the record of the case at Exh. 9. The Tribunal has, while appreciating evidence of the applicants, considered that the opponent railway has not refuted the evidence led by the claimants. The Tribunal has also considered other documents, namely, memorandum issued by the Superintendent, Western Railway, Anand which shows that a person had fallen down from Inter City Express train and his body was sent to the hospital for medical examination. Inquest panchnama at Exh. 11 of the deceased Diptesh shows that he has fallen down from the train and ultimately he died. The Tribunal has considered the evidence of Lakhabhai @ Laxmanbhai Maganbhai Patel who is father of the deceased and as per his deposition he deposed that his son was travelling in the train and his son had fallen down from the running train. The Tribunal has, in the light of the evidence led by the claimants and in the light of the provisions of Section 123C and 124 of the Railway Act, held that the incident is covered under the said sections as untoward incident and held that the deceased was a passenger who died while he was travelling in the train and allowed the application by awarding compensation of Rs. 4,00,000/-. The learned counsel for the appellant has submitted that the Tribunal ought to have allowed the application Exh. 6A to enable the appellant railway authority to lead evidence by examining the witnesses and to produce documents pertaining to the accident. As found from the evidence led by the applicants the Tribunal has considered all the relevant documents produced at the instance of the applicants which are the documents pertaining to the accident. Railway ticket at Exh. 9 on the record of the case shows that the deceased after purchasing the said ticket was travelling in the train and had fallen down from the running train. The other important document is on the record of the case which shows that the railway police had also sent memorandum informing the railway police at Anand that a person who had fallen from the running train was sent in the same

train and the railway police at Anand was required to make necessary arrangement for admitting the said person in the hospital. Post-mortem note and the medical certificate of the deceased Diptesh show that Diptesh was died and the cause of death was shown to be direct injury to the brain. The Tribunal has considered this evidence led by the applicants and recorded the finding that the deceased Diptesh was travelling in a train as a bona fide passenger after purchasing ticket and he fell down from the running train. The Tribunal has considered provisions of Section 123C and 124 of the Railway Act. The Tribunal has also considered relevant provisions of the Act and decided the application in favour of the claimants. In our view after the written statement was submitted and when the recording of the evidence was drafted and from the evidence of the claimants, relevant documents are proved and exhibited. The Tribunal has accepted the evidence of the claimants and decided the application by granting compensation in favour of the claimants. In our view, the documents are appreciated by the Tribunal which are proved and from the evidence of the claimants it establishes that the deceased was a bona fide passenger travelling in the train. We also perused post-mortem note of the deceased Diptesh. In post-mortem note injuries are reflected in column No. 17 and such injuries are the direct result of the person falling from the running train. In our view whatever documents which the appellant was required to produce is not highlighted in the application for adjournment and in our view the documents which are exhibited in the evidence of the claimants are the relevant documents which were required to be considered by the Tribunal. In our view, the award passed by the Tribunal clearly indicates that the Tribunal has rightly appreciated the evidence led by the claimants and granting of compensation is based on evidence. To consider the submissions of Mr. Pandya, learned counsel for the respondents, that the Tribunal has not awarded interest while granting compensation and according to him while deciding the present appeal, the Court may while dismissing the appeal of the appellant railway authority, award interest in favour of the claimants and in this connection he has placed reliance on Order 41 Rule 33 of the C.P.C.

8. In our view it is difficult for us to accept the contention of Mr. Pandya that while dismissing the appeal filed by the railway authority interest be awarded as the Railway Claims Tribunal has not granted interest while granting compensation. Accordingly, we are of the view that while dismissing the appeal and without any Cross Objection filed by the respondent claimants, the

claimants are not entitled to interest in an appeal filed by the railway authority. The appeal is accordingly dismissed with no order as to costs.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)
(pkn)